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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Aaron Thomas Mitchell,

13 Defendant.
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No. CR-22-01545-001-TUC-RM (EJM)

ORDER

15 Pending before the Court is the Government's Motion for Reconsideration of its
16 Motion to Exclude Self-Serving Hearsay Offered by the Defendant. (Docs. 243, 247.)¹
17 Defendant responded in opposition to the Motion for Reconsideration. (Doc. 253.)² The
18 Government requests reconsideration of the Court's Order (Doc. 239) finding that the
19 video-recorded statement Defendant gave to Douglas Police must be played in its entirety
20 to avoid confusing the jury. (Docs. 243, 247.)

21 The Government maintains that portions of the interview are excludable at trial
22 under Federal Rule of Evidence 802 because they contain irrelevant, self-serving hearsay
23 without any applicable exception. (Doc. 243 at 2.) The Government avers that excludable
24 portions of the interview include, for example: Defendant's description of the victim being
25 obsessed with him; Defendant's claims that the victim "came onto" him, that she was

26 ¹ After the Government filed its Motion for Reconsideration (Doc. 243), the Court ordered
27 the Government to submit a proposed transcript clearly showing the redactions it intends
28 to make and to further explain its proposed modifications (Doc. 246). The Government
filed a Response complying with this request. (Doc. 247.)

² The Court provided Defendant an opportunity to respond to the Motion for
Reconsideration. (See Doc. 251); LRCiv 7.2(g)(2).

1 “scorned” by him, and that she didn’t want to be caught skipping school; and Defendant’s
 2 statements calling the victim a “bitch” and a “liar.” (*Id.*) The Government further contends
 3 that portions of the interview in which Defendant attributes statements to the victim are
 4 inadmissible double hearsay. (*Id.* at 3.) Defendant argues in opposition that the rule of
 5 completeness, as outlined in Federal Rule of Evidence 106, requires that the entire
 6 interview be played to avoid distorting the statement’s meaning. (Doc. 253.) Defendant
 7 also argues that the Government’s decision to charge him with misleading conduct towards
 8 the Douglas Police Department in Count Three warrants admission of the entire statement.
 9 (*Id.* at 2.)

10 When offered by the Government, a defendant’s self-inculpatory statement is an
 11 “opposing party’s statement” and thus not hearsay under Federal Rule of Evidence
 12 801(d)(2). *United States v. Ortega*, 203 F.3d 675, 682 (9th Cir. 2000), *modified on other*
 13 *grounds by United States v. Larson*, 495 F.3d 1094 (9th Cir. 2007). However, Rule
 14 801(d)(2) does not provide a hearsay exception for a defendant seeking to offer his own
 15 exculpatory statement. *See United States v. Fernandez*, 839 F.2d 639, 640 (9th Cir. 1988).
 16 Such “non-self-inculpatory statements are inadmissible even if they were made
 17 contemporaneously with other self-inculpatory statements.” *Ortega*, 203 F.3d at 682. To
 18 allow otherwise would permit the defendant “to place his exculpatory statements before
 19 the jury without subjecting himself to cross-examination, precisely what the hearsay rule
 20 forbids.” *Fernandez*, 839 F.2d at 640 (internal quotations and alterations omitted).

21 Having considered the Government’s arguments and Defendant’s opposition, the
 22 Court finds that Defendant’s non-self-inculpatory statements, as identified by the
 23 Government, are excludable as hearsay. The Court further finds no legal exception to
 24 warrant their inclusion. Contrary to Defendant’s position, the rule of completeness does
 25 not require admission of the entire interview where, as here, the most recent redacted
 26 version is not misleading. *United States v. Vallejos*, 742 F.3d 902, 905 (9th Cir. 2014) (“if
 27 the complete statement does not serve to correct a misleading impression in the edited
 28 statement...the Rule of Completeness will not be applied to admit the full statement”)

1 (internal quotation marks omitted); *see also United States v. Dorrell*, 758 F.2d 427, 434–
2 35 (9th Cir.1985) (holding that the district court did not violate the Rule of Completeness
3 where the redacted version of a confession did not “distort[] the meaning of the statement”)
4 (internal quotation marks omitted)). Furthermore, Defendant has failed to establish how
5 his charges in Count Three provide a legal basis to admit his hearsay.

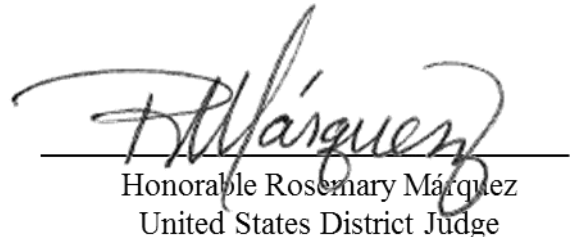
6 The Government’s most recently proposed redacted transcript provides the jury with
7 a complete picture of Defendant’s statement. Therefore, the Court will grant the
8 Government’s Motion for Reconsideration and allow it to offer its proposed redacted
9 transcript and video at trial, with one exception: the Court will order the Government to
10 omit the entirety of Defendant’s statement after page 129, line 21 of the transcript (Doc.
11 247-1). As Defendant notes, this section is irrelevant and unduly prejudicial. (Doc. 253.)

12 Accordingly,

13 **IT IS ORDERED** that the Government’s Motion for Reconsideration of
14 Government’s Motion to Exclude Self-Serving Hearsay Offered by the Defendant (Doc.
15 243) is **granted**. At trial, the Government may offer Defendant’s video-recorded statement
16 synched with the redacted transcript, as specified herein and proposed in its Supplemental
17 Briefing Regarding Exclusion of Defendant’s Statement (Doc. 247-1).

18 Dated this 12th day of August, 2024.

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Honorable Rosemary Márquez
United States District Judge